

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0060P
Use Tax
Calendar Years 1999, 2000, and 2001

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was previously audited and an agreement was signed that utilized a "Formulary Use Tax Treatment on Applicable Purchases". At audit, it was determined that the taxpayer failed to self assess and remit use tax for several accounts that were previously agreed upon to be included in calculating use tax due.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and contends that it acted in good faith, without negligence and with no intent to defraud the state. Taxpayer further states that it made every effort to be in compliance with Indiana sales and use tax laws which had been filed and paid timely.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer failed to remit use tax upon items that were clearly listed in an agreement between the taxpayer and the Indiana Department of Revenue. Taxpayer has not provided reasonable cause for the failure to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.